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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

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MAY 17 2005

Federal Communications Commission  
Office of Secretary

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Richlands, Shallotte, Topsail Beach, and  
Wrightsville Beach, North Carolina)

MB Docket No. 05-16  
RM-11143

To: The Office of the Secretary

**REPLY TO CONNER MEDIA CORPORATION'S OPPOSITION TO MOTION OF  
SEA-COMM, INC. TO STRIKE REPLY COMMENTS OF CONNER MEDIA  
CORPORATION**

Sea-Comm, Inc. ("Sea-Comm"), whose Petition for Rule Making has resulted in the initiation of the captioned proceeding, by its undersigned counsel, and pursuant to Section 1.45(c) of the Commission's Rules, hereby respectfully submits this Reply to the Opposition (the "Opposition") filed on behalf of Conner Media Corporation ("Conner") in response to Sea-Comm's Motion to Strike (the "Motion to Strike") Conner's Reply Comments (the "Reply Comments"). Conner's Opposition has left unanswered the central point of Sea-Comm's Motion to Strike: that Conner's Reply Comments were filed out of time and thus should be dismissed and given no consideration. This is illustrated by the fact that Conner's Opposition, in three pages, has completely failed to rebut the facts discussed below.

To begin, Conner has failed to rebut the fact that, according to the Commission's own records, Conner's Reply Comments were filed with the Commission on April 7, 2005 -- two

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days after the reply comment filing deadline of April 5, 2005 had passed.<sup>1</sup> In its Opposition, Conner attempts to provide support for its contention that its Reply Comments were timely filed, by proffering a copy of the first page of its Reply Comments date stamped “Received-FCC” on April 5, 2005 by the “Federal Communication [*sic*] Commission Bureau/Office.” Sea-Comm submits that all Conner accomplished by doing so was to demonstrate that Conner’s Reply Comments were not filed in the Secretary’s Office by the specified filing deadline but, instead, were received by an unspecified Commission Bureau on the date indicated (and, thus, at an inappropriate location).

Next, Conner attached to its Opposition a “Statement Under Penalty of Perjury,” dated May 5, 2005, that consists of a declaration by Lonnie Robertson, Jr., whose company apparently provides agency filing services to Conner’s law firm, to the effect that he personally delivered a copy of Conner’s Reply Comments to the Commission’s Secretary’s Office on April 5, 2005, and purportedly witnessed the document being stamped in as received on that date. Sea-Comm admits that it has no basis for confirming nor denying Mr. Robertson’s statements. Instead, Sea-Comm notes that Mr. Robertson’s statements evidence a dispute not with Sea-Comm, but with the Commission’s own records, which, as discussed below, plainly contradict Mr. Robertson’s statements.

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<sup>1</sup> As noted in Sea-Comm’s Motion to Strike, filed in this proceeding on April 26, 2005, the *Notice of Proposed Rule Making* in this proceeding, DA 05-76, adopted on January 26, 2005 and released on January 28, 2005, 20 FCC Rcd. \_\_\_\_\_, 70 Fed. Reg. 7220 (Feb. 11, 2005), specified that filings in this proceeding were to be made with the Office of Secretary and that reply comments were due to be filed on or before April 5, 2005. Thus, to be considered timely, reply comments should have been filed with the Secretary’s Office by April 5, 2005, not April 7, 2005, the date on which Conner’s Reply Comments were received in the Commission’s Secretary’s Office.

First, both the date-stamped copy proffered by Conner, as well as Mr. Robertson's declaration, leave unanswered Sea-Comm's observation in its Motion to Strike that the official date-stamped copy of Conner's Reply Comments contained in the Commission's files actually bears a date stamp as "Received" on April 7, 2005 by the "Federal Communications Commission Office of the Secretary."<sup>2</sup> Second, neither the date-stamped copy proffered by Conner, nor Mr. Robertson's declaration, provides any rebuttal to Sea-Comm's observation that the Commission's Electronic Comment Filing System ("ECFS") lists Conner's Reply Comments as having been received by the Commission on April 7, 2005.<sup>3</sup> These facts demonstrate that, according to the Commission's own records, Conner's Reply Comments were filed on April 7, 2005. By failing to directly rebut these facts, Conner has failed to answer the central point of Sea-Comm's Motion to Strike: that Conner's Reply Comments were filed out of time and thus should be dismissed and given no consideration.<sup>4</sup>

Finally, Sea-Comm observes once again that the Commission's April 1, 2005 *Public Notice* reminded interested parties, such as Conner, that filings in FM broadcast station channel

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<sup>2</sup> The copy of Conner's Reply Comments in the Commission's files bears a large handwritten "x" marking out the April 5, 2005 date-stamp upon which Conner has attempted to rely as evidence of timely filing. *See* Motion to Strike, pp. 1-2 and Appendix A.

<sup>3</sup> *See* Motion to Strike, p. 2, n. 2, and Appendix B.

<sup>4</sup> Conner makes a halfhearted attempt to divert the Commission's attention from the focus of the Motion to Strike – the timeliness of Conner's Reply Comments – by attacking Sea-Comm's own filings in this proceeding. These attacks have been answered in Sea-Comm's Opposition to Conner's "Motion for Leave to File Procedural Response to Reply Comments" and "Procedural Response to Reply Comments," filed in this proceeding by Sea-Comm on April 27, 2005. Sea-Comm reiterates that the Commission's own records indicate that Sea-Comm's filings in this proceeding have been timely and properly filed, and respectfully submits that the implication of any irregularity in Sea-Comm's filings in this proceeding could hardly be considered a legitimate basis for excusing the established untimeliness of Conner's Reply Comments.

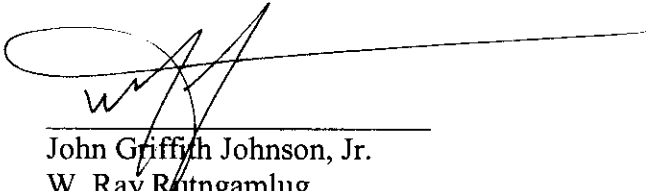
allotment rule making proceedings are required to be made with the Office of the Secretary, and not with any other Commission Bureau or Office, and that “[i]ncorrectly addressed filings will be treated as having been filed on the receipt date shown on the official ‘Office of the Secretary’ date stamp. Failure to follow these requirements may result in the treatment of a filing as untimely.”<sup>5</sup> The misfiling of Conner’s Reply Comments four days after the release of this *Public Notice* cannot be excused.

In view of the foregoing, Conner’s Reply Comments must be treated as having been filed with the Commission on April 7, 2005, which renders the Reply Comments untimely and subject to no consideration.

Respectfully submitted,

**SEA-COMM, INC.**

By:



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May 17, 2005


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<sup>5</sup> See *Public Notice*, “Filing Requirements in FM Allotment Rulemaking Proceedings,” DA 05-995 (rel. April 1, 2005). See also Motion to Strike, pp. 3-4 and Appendix C.

**CERTIFICATE OF SERVICE**

I, Shandila Y. Collins, a secretary in the law firm of Paul, Hastings, Janofsky & Walker, LLP, do hereby certify that I have on this seventeenth day of May, 2005, caused a copy of the foregoing **REPLY TO CONNER MEDIA CORPORATION'S OPPOSITION TO MOTION OF SEA-COMM, INC. TO STRIKE REPLY COMMENTS OF CONNER MEDIA CORPORATION** to be sent to the following by first-class United States mail, postage prepaid:

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